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In The

Supreme Court of the United States

October Term, 1979

No. 79-

Julia McCain Lampkin-Asam, Ph.D.,
Petitioner,

vs.

The Supreme Court of Florida,
Respondent,

Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit

Julia McCain Lampkin-Asam, Ph.D.
Petitioner
Representing Self
2245 Gorham Avenue
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September 14, 1979

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I.

THE OPINIONS DELIVERED IN THE COURTS BELOW AND THE DATES OF THE JUDGMENTS SOUGHT TO BE REVIEWED

The petitioner, Julia McCain Lampkin-Asam, prays that a writ of certiorari issue to review the opinion and judgment of the Court of Appeals for the Fifth Circuit rendered in these proceedings on August 27, 1979. The decision and opinion of the U.S. Court of Appeals, dated August 27, 1979, appears in the Appendix as Ex. B. The order to dismiss by the U.S. District Court, Southern District of Florida, dated December 15,

1978, is in the Appendix as Ex. C. The order denying the petition for Writ of Mandamus by The Supreme Court of Florida is in the Appendix as Ex. D, dated November 9, 1978. The order to dismiss as "not timely filed" by the District Court of Florida, Third District, Miami, Florida is dated April 19, 1978, (Ex. E). The summary judgment by one judge of the lower circuit court is dated March 8, 1978, (Ex. F).

II

THE STATUTORY PROVISION BELIEVED TO CONFER JURISDICTION ON THIS COURT

Jurisdiction of this Court is invoked under 28 USC section 1254 (1); 28 USC section 1257 (3); 28 USC section 2106; 42 USC section 1983; and 28 USC section 1343 (3). (See Appendix for Excerpts from the U.S.C.)

Jurisdiction of this Court under 28 USC section 1254 (1) provides for the granting of a writ of certiorari upon the petition of any party to a civil case after rendition of judgment by the Court of Appeals.

Since the State Court final judgment (Ex. D in appendix was the subject of the federal case, the 28 USC section 1257 (3) is applicable by "writ of certiorari ...where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution...of the United States or where any...right...is specially claimed under the Constitution."

"See case Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281,286, 90 S. Ct. 1739, 26 L. Ed. 2d 234 (1970),

"Only the Supreme Court was authorized to review on direct appeal the decisions of state courts."

III

QUESTIONS PRESENTED FOR REVIEW

A. Does Federal Constitutional law (First and Fourteenth Amendments to the U.S. Constitution) preempt state procedural law (Fla. Appellate Procedure 9.040 (b) - Ex. A in Appendix) to correct error of lawyer of the plaintiff sending the appeal into an intermediate appeal court (3rd District Court of Appeal, Miami, Fla., Ex. E.) to the wrong court when court had no legal proof "not timely filed" by lawyer?

B. Does the decision by one judge of summary judgment by the lower circuit court constitute an error of federal constitutional magnitude since the First and Fourteenth Amendments to the U.S. Constitution were involved in a prima facie libel case showing "actual malice" within the ambit of the New York Times Standard Rule, (New York Times Co., v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, 11 L Ed 2d 686 (1964), since the plaintiff, Dr. Lampkin-Asam, now petitioner, in instant case, was a public figure for a decade before and at the time of the printing of the libel by the Miami News, Oct. 23, 1973?

C. Can the Supreme Court of the United States take original jurisdiction or whatever steps necessary with this writ of certiorari to reverse the federal constitutional error made by the lower circuit court judge by making a summary judgment when the judge was aware that a constitutional issue involving the first amendment to the U.S. Constitution was involved?

D. Can the Supreme Court of the United States place the defendant Dr. W.F.Dunning knowingly making the false statements in the Miami News, Oct. 23, 1973, back into her original status as codefendant with the Miami News et al. libel case before the judge made the summary judgment impugning the U.S. constitutional rights of Dr. Julia Lampkin-Asam?

E. Can the Supreme Court of the United States through 28 USC section 2106, remand to The Supreme Court of Florida requesting the state to use Florida law which is available to correct the error of an attorney sending an appeal to the wrong court, (Fla. Appellate Procedural law 9.040 (b) - see appendix), and reverse the decision on the case 54,134, Petition on Writ of Mandamus to reinstate the appeal with Dr. W.F.Dunning into the 3rd District Court of Appeal, so that a meritorious appeal involving a summary judgment by the lower circuit court judge, knowing that constitutional issue was involved, can be processed? This action is necessary so that the petitioner, Dr. Julia Lampkin-Asam will be allowed access to the court to correct the false statements made by Dr. W.F. Dunning in collaboration with the reporter, Ms. Terry Johnson King, publishing in the Miami News false statements concerning Dr. Lampkin-Asam personally and professionally about her cancer research. (See below for direct quote from Dr.Dunning printed in the Miami News, Oct. 23, 1973.)

See Finkel v. Sun Tattler Co., Inc. Fla. App. 348 So 2d 41 at 52, the following:

"Under such circumstances, any litigant, whether public official or private individual, is entitled to a trial on the merits of his or her claim. Our traditional sense of justice and fair play demands no less, particularly where one's reputation or good name is alleged to have been impugned. The free speech protections of the First Amendment and the right of access to our courts under the Florida and United States Constitutions can be properly recognized, balanced and preserved in the sunshine of a trial on the merits."

F. Whether the Court can determine if the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution requires that a state allow a citizen of the U.S. and Florida to have access to a state court when abuse of state procedural laws prevented the petitioner from entering the 3rd District Court of Appeal (state court in Dade County, Florida) because her lawyer sent the appeal to the wrong court and the clerk of the court failed to file stamp the envelope when received? The case was dismissed as "not timely filed" when the court had no legal proof the appeal case was not sent on time. When no legal evidence is available according to Perez v. State, 143 So 2d 663 (Fla. 3rd DCA 1962) and Campus University Apts., Inc. v. Audlane Lumber and Builders Supply Inc. 205 So 2d 687 (Fla. 2d DCA 1968), the case is considered timely filed.

The Importance of the Issues

The petitioner, Dr. Julia Lampkin-Asam, quotes the Hon. Chief Justice Warren Burger from a recent case of Hutchinson v. Proxmire (47 U.S. Law Week, 4827 ___U.S. ___(1979), p. 4830 of the 47 U.S. Law Week, footnote 9,

"The proof of "actual malice" calls a defendant's state of mind into question, New York Times v. Sullivan, 376 U.S. 254 (1964) and does not readily lend itself to summary disposition. (Emphasis added.)

"See 10 Wright and Miller, Federal Practice and Procedure section 2730, at 590-592, Cf. Herbert v. Lando, ___U.S.___(1979)."

The appeal in the 3rd District Court of Florida was necessary since Judge Satin, judge of the lower circuit court in Dade Co. Florida,made an erroneous summary judgment in favor of defendent Dr. W.F. Dunning when clear U.S. constitutional issues (First and Fourteenth Amendments to the U.S. Constitution) were involved concerning a prima facie libel, "libelous per se", proven by direct documentary evidence showing "actual malice" by Dr. W.F. Dunning who knowingly made false statements in the newspaper concerning Dr. Lampkin Asam. (See pp. 9-16,23, Appellant Brief from U.S. Court of Appeals, Fifth Circuit).

Dr. Dunning knowingly made the false statement in the Miami News, Oct. 23, 1973 about Dr. Julia Lampkin-Asam as stated below:

"She is very emotionally disturbed, and has no qualifications to do cancer research. She may have gotten her doctorate from the George Washington University but I suspected they gave her the degree to get rid of her." (See Exhibit D of Appellant Brief for copy of Miami News, article, Oct. 23, 1973.). Not only, did Dr. Dunning abuse the First Amendment to the U.S. Constitution by knowingly making false statements, but also, Dr. Dunning completely damaged and defamed the professional reputation of Dr. Lampkin-Asam, the petitioner in instant case, who

could not receive a position in cancer research anywhere - a violation of the property right" of the Fourteenth Amendment to the U.S. Constitution, when Dr. Lampkin-Asam is a cancer scientist.

IV.

CONSTITUTIONAL PROVISIONS AND STATUTES

Federal constitutional issues to be considered in this Writ of Certiorari.

1. Fourteenth amendment to U.S. Constitution "Due Process".
2. Fourteenth amendment to U.S. Constitution "Property clause".
3. First Amendment to U.S. Constitution, Speech and Press. (See appendix for first and fourteenth amendments quoted).
4. 28 USC section 1257 (3) - validity of a state statute (state procedural law from state of Florida, 9.040 (b) - see appendix), is drawn in question on ground of its being repugnant to the constitution of the United States.
5. State Statutes of Florida Appellate Procedural Law (see appendix for quotes of the statutes) involving:
   a. 9.949 (b) law providing the case sent to wrong court can be placed in correct court.
   b. 9.420 (d) law five days shall be added to time if served by mail.
   c. 9.420 (c)(1) law concerning the fact that service by mail shall be complete upon mailing.

V

STATEMENT OF THE CASE

This is a Writ of Certiorari concerning case no. 79-1146 from the U.S. Court of Appeals, Fifth Circuit, which was a request through the U.S. District Court,

Southern District Court of Florida, to have The Supreme Court of Florida as respondent, to reverse decision of case No. 54,134. Case no. 54,134 was a Petition for Writ of Mandamus addressed to The Florida Supreme Court asking it to direct the intermediate appellate court (3rd District Court of Florida, Dade County, Florida) to reinstate an appeal which had been erroneously dismissed as not timely filed. The Supreme Court of Florida denied relief. The U.S. District Court and the U.S. Court of Appeals, Fifth Circuit, claimed did not have jurisdiction to review a state court.

The petitioner respectfully requests that The Supreme Court of the United States according to 28 USC section 1257 (3) and other jurisdictional sections of the USC quoted on p. 2 of this Writ of Certiorari accept juristiction and make it possible for the petitioner to have access to the court to take a meritorious appeal to court involving Dr. W.F. Dunning as defendant in the Miami News prima facie libel case. The circuit judge of the lower circuit court, Miami, Florida decided on a summary judgment when constitutional issue concerning the first amendment involving "actual malice" according to the New York Standard Rule (New York Times Co., v. Sullivan supra) was clearly indicated since Dr. Lampkin-Asam, plaintiff (now petitioner in instant case), was clearly a public figure a decade before and at the time of the printing of the false and defamatory statements made by Dr. W. F. Dunning. As stated above p. 6 of this Writ of Certiorari, Hon. Chief Justice Warren Burger stated, in Hutchinson v. Proxmire (47 U.S. Law Week, 4827,

___U.S.___(1979) p. 4830 of the 47 U.S. Law Week, footnote 9,

"The proof of "actual malice" calls a defendant's state of mind into question, New York Times v. Sullivan, 376, U.S. 254, (1964) and does not readily lend itself to summary disposition."

The Summary Judgment in favor of dismissing Dr. W.F. Dunning from the Miami News et al. case was decided by one judge should not have been issued at all on the basis of the following cases: From Wright and Miller, 10 Fed. Practices and Procedures, section 2712, pp. 378-379, Judgment in General,

"A motion for summary judgment lies only when there is no genuine issue of material fact; Summary Judgment is not a substitute for the trial of disputed fact issues." See Machinery Center, Inc. v. Anchor Nat. Life Ins. Co. C.A. 10th 1970, 434 F. 2d 1; Perma Research & Dev. Co. v. Singer Co., C.A. 2d 1969, 410 F 2d 572; Nafco Oil & Gas, Inc. v. Appleman, C.A. 10th 1967, 380 F. 2d 323.

From Wright and Miller 10 Fed. Practices and Procedures, section 2730, p. 590.

"Inasmuch as malice calls defendant's state of mind into question, summary judgment often will be refused when that issue is raised, Denial in malice cases, p. 590. See Wasserman v. Time, Inc. C.A. 1970, 424 F. 2d 920, 138 U.S. App. D.C. 7, certiorari denied 90 S Ct. 1844, 398 U.S. 940, 26 L Ed 2d 273 (publisher's knowledge of facts underlying reported incident created an issue of fact as to existence of actual malice).

"The element of "malice" is essential to a cause of action for intentional inter-

ference with business and precluded summary judgment in an action by an oil company to recover from another oil company, for that tort." Midway Oil Co. v. Cities Serv. Oil Co., D.C. Ill. 1970, 49 F.R.D. 273.

Denial in malice cases p. 591, section 2730 of Wright and Miller 10 Fed. Practices and Procedures.

"...in the law of defamation, to survive summary judgment proceedings it is necessary that he offer some evidence upon which a jury could find convincing clarity of actual malice or reckless disregard. The decisions require that he come forward with evidence of the defendant's state of mind; in effect, he must prove a negative. ...Where the plaintiff presents evidence to show that the publisher chose to substitute his opinion for facts actually known by him in an article that is capable of defamatory meaning he has come forward with sufficient evidence to show reckless disregard. Ragano v. Time, Inc. Fla. 1969, 302 F. Supp. 1005, 1010, (per Krentzman, J.), affirmed C.A. 5th, 1970, 427 F. 2d 219.

Denial of summary judgment pp. 591-592 of section 2730, of Wright and Miller 10 Fed. Practices and Procedures.

"Defendant was not entitled to summary judgment on plaintiff's claim based on inducement of breach of contract or "prima facie tort," since questions of excuse, justification, malice, wilfuliness, and intention to harm entail facts and circumstances that should not be decided on deposition or affidavits. Miller v. Shell Co. D.C. N.Y. 1958, 161 F. Supp. 373.

Not only did Judge Satin, judge of the lower circuit court, make a summary judgment involving a constitutional issue but Judge Satin also made a decision based on misinterpretation of the law, that is, an incorrect reference in law. Judge Satin quoted the lower circuit court when the dicision was reversed and remanded by the appeal court. The case misinterpreted by Judge Satin was Hevey v. News Journal Corp. Fla. 148 So 2d 543. Therefore, the appeal concerning Dr. W.F. Dunning as a codefendant in the Miami News libel case should have been allowed in the appeal court, 3rd District Court of Appeal, Miami, Florida.

"The right of access to the courts is founded in the due process clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights." Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L Ed. 2d 935.

Ms. Terry Johnson King, reporter for the Miami News before and at the time of the publication of Dr. W.F. Dunning's false statements knew that she was publishing false statements concerning Dr. Lampkin-Asam, since the Miami News on the local front page, Sept. 15, 1966, published a story on the cancer research of Dr. Lampkin entitled, "Lab Animals Dade Scientist 'Controls' Cancer," (see exhibit AA of the Appellant Brief from U.S. Court of Appeals). Ms. King swore under oath at her deposition to have read the book, entitled, "Malignant Intrigue," written by the petitioner in this instant case. On

page 429 of "Malignant Intrigue" was a reprint of the Miami News Article published in 1966 clearly showing the petitioner's cancer research. In addition this 1966 news article was in the Miami News files. Therefore, both Dr. Dunning and Ms. King knew the statements made by Dr. Dunning were false before and at the time of the publication, Oct. 23, 1973, in the Miami News.

The New York Times Rule (New York Times Co. v. Sullivan, supra, at 279-280 states:

"unless he proves that the statement was made with actual malice" -- that is, with knowledge that it was false or with reckless disregard of whether it was false or not."

This New York Times Rule of "actual malice" was squarely met since Dr. Lampkin-Asam was considered a public figure before and at the time of the publication, Oct. 23, 1973, by the Miami News, attorney, Mr. Averill, who wrote in a brief to Judge Satin, "Plaintiff is clearly a "public figure"..."She has received significant publicity." (Plaintiff was referring to Dr. Lampkin-Asam). This evidence shows that Judge Satin was aware that a constitutional issue involving the First Amendment was involved concerning the statement made by Dr. Dunning who knowingly made the following false statement (also quoted p. 6 of this Writ of Certiorari).

"She is very emotionally disturbed, and has no qualifications to do cancer research. She may have gotten her doctorate from George Washington University but I suspected they gave her the degree to get rid of her."

This instant case involves an U.S. citizen, Dr. Julia Lampkin-Asam, not being able to have access to a court (3rd Distirct Court of Appeal, Florida) when the U.S. citizen has been completely damaged for life by a prima facie libel by another Ph.D., Dr. W.F. Dunning. Dr. Lampkin-Asam has been unable to find a cancer research position anywhere in the U.S. because of what Dr. Dunning falsely stated concerning Dr. Lampkin-Asam personally, and professionally concerning her cancer research. Dr. Lampkin-Asam is the original developer of the P1798 model lymphoma systems, author of three books on cancer, author of over 20 scientific publications on cancer research, lecturer on cancer research, and before the publication of the Miami News article Oct. 23, 1973, Dr. Lampkin had been on numerous radio, TV, and in newspapers concerning cancer research. Dr. Lampkin-Asam's cancer research has been blocked by Dr. Dunning's false statements. Therefore, Dr. Lampkin-Asam needs to take Dr. Dunning to court as a co-defendant in the Miami News et al. libel case.

"The clause "due process of law" means that there can be no proceeding against life, liberty, or property which may result in the deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights." Turpin v. Lemon, 187 U.S. 51, 23 S Ct. 20, 47 L Ed 70.

The decision by one judge, of the lower circuit court, by making a decision of summary judgment in favor of Dr. Dunning when

a constitutional issue was involved was erroneous. Therefore, Dr. Lampkin-Asam should be allowed access to the state court to take the appeal to court, or if possible, The Supreme Court of the United States, if there is a legal way, the petitioner, respectfully requests, that Dr. Dunning be returned to her original status as codefendant in the Miami News et al libel case before the judge of the lower circuit court made an erroneous decision of making a summary judgment on an U.S. constitutional issue involving the First Amendment (speech and press) and Fourteenth Amendment (Property clause concerning Dr. Lampkin-Asam's right to work as a cancer scientist).

The situation developed with the 3rd District Court of Appeal stating not timely filed when no legal proof not timely filed. The Supreme Court of Florida did not provide relief with the petition for Writ of Mandamus when the Florida State does have the procedural law to correct the mistake of attorney sending an appeal to the incorrect court. This instant case is involved with a Florida procedural law (Fla. Appellate Procedural Law 9.040 (b) impugning the constitutional rights of Dr. Lampkin-Asam (particularly the First and Fourteenth Amendment rights).

The price of an attorney after the Florida Supreme Court was entirely too high when Dr. Lampkin-Asam had been unemployed for a long period of time. Therefore, Dr. Lampkin-Asam continued the case in the U.S. District Court, Southern District of Florida, and the U.S. Court of Appeals, Fifth District, and now in the Supreme Court of the United States.

Dr. Lampkin-Asam is a cancer scientist, and not a lawyer, and only knows what law she has been able to find in the law library herself. Therefore, the petitioner, appreciates any legal assistance The Supreme Court of the United States can do to straighten out these legal technicalities and chicanery on the lower circuit level to allow Dr. Lampkin-Asam access to the court so that Dr. Dunning will not be lost as defendant with the Miami News concerning a prima facie libel and prima facie actual malice case shown by both Dr. Dunning in collusion with the reporter, Ms. King of the Miami News.

The same Judge Satin that ruled that Dr. Dunning would be dismissed from the Miami News libel case by making a summary judgment in her favor, decided that the Miami News would not be allowed Summary Judgment and would have to go to trial for the publication of the false statements made by Dr. Dunning and printed by the Miami News et al. Oct. 23, 1973. The Miami News et al. case has been noticed for trial but no date has been set.

"Whether any procedural protections are due depends on the extent to which an individual will be condemned to suffer grievious loss." Morrisey v. Brewer 408 U.S. 471, 92 S Ct. 2593, 33 L. Ed. 2d 484.

Dr. Lampkin-Asam has been defamed and cancer research has been blocked since Dr. Lampkin-Asam cannot obtain a cancer research position when she is a cancer scientist. Also humanity has suffered since Dr. Lampkin-Asam through her 20 years of cancer research experience is not able to continue cancer research due to a prima facie libel by the Miami News and Dr.

Dunning's false statements. Dr. Dunning should not have been dropped as a defendant by one judge making an erroneous decision of summary judgment and technicalities keeping Dr. Lampkin-Asam out of the appeal court to take the case with Dr. Dunning to court to place Dr. Dunning back as a defendant in the Miami News libel case.

Since Dr. Lampkin-Asam's professional reputation and career have been damaged by the false statements that Dr. W.F. Dunning knowingly made and the late reporter, Ms. King knowingly published false statements, a "property right" under the Fourteenth Amendment to the U.S. Constitution exists.

"The infringement by a state of constitutional rights of individuals violates the guaranty of due process where no state interests underlies the state action." (From separate opinion by Warren, Ch.J. and Black, Douglas, and Brennan, JJ.) Sweezy v. New Hampshire, 354 U.S. 234, 77 S. Ct. 1203, 1 L Ed 2d 1311.

VI.

REASONS WHY THE WRIT SHOULD BE ALLOWED

1. A. The Writ of Certiorari should be made to allow the petitioner to have access to the state court (3rd District Court of Appeal, Miami, Fla.) to take an appeal to court that was erroneously decided by summary judgment by one judge who knew that a federal constitutional issue was involved.

Further, the circuit judge made an incorrect reference in law and quoted what happened at the circuit court level when the case was taken to appeal and the cause reversed and remanded. This is another

reason the appeal should have been processed. The appeal was a meritorious appeal to return Dr. Dunning as a codefendant in the Miami News et. al. libel case since Dr. Dunning made the false and defamatory statements about Dr. Lampkin-Asam personally and professionally. Dr. Dunning knowingly made the false statements about Dr. Lampkin-Asam within the meaning of the New York Standard Rule (New York Times Co. v. Sullivan,supra).

2.The Writ of Certiorari should be granted because the State of Florida does have the procedural law to correct the error made by the attorney on the intermediate appeal level sending the appeal case to the wrong court. The Florida Appellate law available to correct the mistake in the wrong court is 9.040 (b) which states,

"If a proceeding is commenced in an inappropriate court, that court shall transfer the case to an appropriate court."

3.The Supreme Court of Florida should reverse the decision on the petition for Writ of Mandamus, case 54,134 and reinstate the case into the appeal court, Dade County, Florida, the 3rd District Court of Appeal so that the petitioner can take Dr. Dunning to court concerning the erroneous decision of a judge awarding a summary judgment in her favor involving a federal constitutional issue. The Writ of Mandamus showed that the 3rd District Court of Appeal erroneously dismissed the case as "not timely filed". The Supreme Court of Florida does have the legal authority to reinstate the case in the state intermediate appeal court. Therefore, the petitioner, respectfully requests The Supreme Court of the United States to issue the Writ of Certiorari so that the Supreme

Court of the United States will be able to review and remand the case to the Florida Supreme Court with instructions to use the Florida law (9.040 (b) -see appendix) to reinstate the appeal case because abuse Fla. procedural law has caused the constitutional rights of the petitioner to be violated.

4. The Supreme Court of the United States should grant the Writ of Certicrari so that the validity of the state law concerning the Writ of Mandamus not being granted by The Supreme Court of Florida can be reviewed and the case reversed (no. 54,134) so that the appeal case with Dr. W.F. Dunning can be reinstated in the intermediate appeal court, (3rd District Court of Appeal, Miami, Fla.).

The reason the case should be reinstated is due to the fact that federal constitutional rights of Dr. Lampkin-Asam have been violated and this is a case of a state procedural law that impugned the constitutional rights of an individual and prevented a citizen of the U.S. and the state from an appeal or access to a court, because of legal technicalities.

5. The Supreme Court of the United States should grant the Writ of Certiorari so that review of the entire case from the lower circuit court through the Florida Supreme Court, through the U.S. District Court, and U.S. Court of Appeals, Fifth Circuit, can be made. If the Supreme Court of the United States has the legal authority, the petitioner, respectfully requests that Dr. W.F. Dunning be reinstated to her original status of codefendant in the Miami News et al. case number 75-32943 in the circuit court in Miami, Florida, because the circuit judge erroneously made a summary judgment impugning a constitutional issue--First Amendment.

VII.

CONCLUSION

1. State procedural law should not impugned U.S. constitutional rights of an individual when state procedural law exists (9.040 (b) Florida Appellate rule) to correct judicial error.

2. The case that should have been tried in the 3rd District Court of Appeal in Dade Co. Florida, unequivocally was a meritorious case involving constitutional issues of the first and fourteenth amendments to the U.S. Constitution. The first (speech and press) and fourteenth (property and due process) amendments' rights of Dr. Lampkin-Asam were violated when one judge erroneously decided to make a summary judgment in favor of Dr. W.F. Dunning who was a codefendant in the Miami News et al. libel case.

3. The judge of the circuit court based his decision of summary judgment on a lower court case of Hevey v. News Journal Corp. Fla. 148 So 2d 543, when the case went to appeal and was reversed and remanded. This is another reason that the petitioner should be allowed access to the appeal court to correct a judicial error by a judge of a circuit court.

4. The Supreme Court of the United States should allow the Writ of Certiorari to take original jurisdiction and place Dr. Dunning back into the lower circuit court, Miami, Fla. as codefendant with the Miami News case since one judge made an erroneous decision of summary judgment when material facts of constitutional magnitude involved "actual malice" in a prima facie libel case.

5. The Supreme Court of the United States should allow the Writ of Certiorari in order to review the case to remand the case to the

Florida Supreme Court with instructions to reinstate (see 28 USC section 2106 in the appendix), by reversing the decision of the Florida Supreme Court to decide in favor of the petition of Writ of Mandamus case 54,134 to reinstate the case into the intermediate appeal court (3rd District Court of Appeal, Florida), so that the defendant Dr. W.F. Dunning can be returned as codefendant in the Miami News et al. prima facie libel case in Miami, Florida.

For the foregoing reasons, it is respectfully submitted that the petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Julia McCain Lampkin-Asam

Julia McCain Lampkin-Asam, Ph.D.
Cancer Scientist
Petitioner
Representing Self
2243 Gorham Avenue
Ft. Myers, Florida 33907

September 14, 1979

APPENDIX

Exhibit A

Excerpts from U.S. and Florida laws.

1. U.S. Constitution Amendments.

Amendment I *"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."*

Amendment XIV *"Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside; No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United states; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."*

Quotes from Constitutional Law, 4 ed. P.A. Freund, A.E. Sutherland, M.D. Howe and E.J. Brown, Little, Brown & Co., Boston, 1977.

2. Florida Statutes: Florida Rules of Appellate Procedure.

1. Rule 9.040 (b)
   "Forum. If a proceeding is commenced in an inappropriate court, that court shall transfer the cause to an appropriate court."
2. Rule 9.420 (c)(1)
   "Service by mail shall be complete upon mailing."
3. Rule 9.420 (d)
   ..."*the document is served by mail, five days shall be added to the prescribed period.*"

Exhibit A

(continued)

3. Quotes from U.S.C. concerning jurisdiction of The Supreme Court of the United States.

28 USC section 1254 (1)

"(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

28 USC section 1257 (3)

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right,privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

28 USC section 2106

"The Supreme Court or any other court of appellate jurisdiction may affirm, modity, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."

42 USC section 1983

"Every person who, under color of any statute, ordinance, regulation, custom, or usuage, of any State or Territory, subjects, or causes to be subjected, any citizen of

Exhibit A

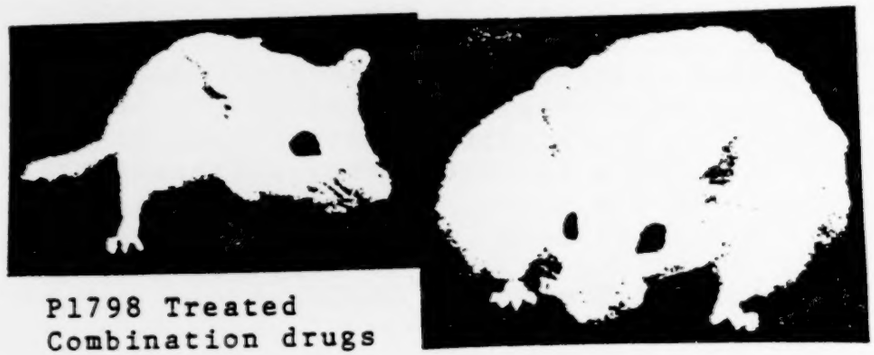
(continued)

the United States or other person within the jurisdiction thereof to the deprivation of any rights, privleges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

28 USC section 1343 (3)

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;"

LEGAL TECHNICALITIES BLOCK CANCER RESEARCH



P1798 Treated
Combination drugs

P1798 Untreated
Control

Exhibit B

7118

LAMPKIN-ASAM v. SUPREME COURT OF FLORIDA

Julia McCain Lampkin-Asam,
Plaintiff Appellant,
v.
The Supreme Court of Florida
Defendant-Appellee

No. 79-1146
Summary Calendar.*

United States Court of Appeals,
Fifth Circuit

August 27, 1979

Petition was filed seeking to reverse a decision of the Florida Supreme Court. The United States District Court for the Southern District of Florida, Sidney M. Aronovitz, J., dismissed the petition, and appeal was taken. The Court of Appeals held that a federal district court, as a court of original jurisdiction, lacks appellate jurisdiction to review, modify, or nullify a final order of a state court.

Affirmed.

Courts ☞ 509

A federal district court, as a court of original jurisdiction, lacks appellate jurisdiction to review, modify, or nullify a final order of a state court. 28 U.S.C.A. section 1257 (3).

Exhibit B (continued)

Appeal from the United States District Court for the Southern District of Florida.

Before GOLDBERG, RONEY and TJOFLAT, Circuit Judges.

*Rule 18, 5 Cir, see Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York et al., 5 Cir., 1970, 431 F. 2d. 409, Part I.

PER CURIAM:

Naming "The Supreme Court of Florida" as respondent, petitioner filed in the Southern District of Florida a "Petition to Reverse Decision of Case No. 54,134." Case No. 54,134 was a Petition for Writ of Mandamus addressed to the Florida Supreme Court asking it to direct the intermediate appellate court to reinstate an appeal which had been dismissed as not timely filed. The Supreme Court denied relief.

The district court correctly dismissed the petition for lack of subject matter jurisdiction. It is axiomatic that a federal district court, as a court of original jurisdiction, lacks appellate jurisdiction to review, modify, or nullify a final order of a state court. 28 U.S.C. section 1257 (3). See Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 296, 90 S. Ct 1739, 26 L. Ed 2d 234(1970).

This Court has held on numerous occassions that federal district courts do not have jurisdiction under 42 U.S.C. section 1983 or any other theory to re-

verse or modify the judgments of state courts. *Cheramie v. Tucker*, 493 F. 2d. 586, 589 (5th Cir.), cert. denied, 419 U.S. 868, 95 S.Ct. 126, 42 L.Ed2d 107 (1974); *Hill v. McClellan*, 490 F. 2d 859, 860 (5th Cir. 1974); *Carter v. Duggan*, 455 F.2d 1156, 1158 (5th Cir. 1972); *Aris v. Big Ten Taxi Corp.*, 441 F. 2d 536 (5th Cir. (1971); *O'Connor v. O'Connor*, 315 F. 2d 420, 422, (5th Cir. 1963); *Hanna v. Home Insurance Co.*,281 F. 2d 298, 303 (5th Cir. 1960), cert.

7119
LAMPKIN-ASAM v. SUPREME COURT OF FLORIDA

denied, 365 U.S. 838, 81 S.Ct. 751, 5 L. Ed.2d 747 (1961); *Williams v. Tooke*, 108 F. 2d 758, 759, (5th Cir.) cert. denied, 311 U.S. 655, 61 S. Ct. 8, 85 L. Ed. 419 (1940).

AFFIRMED.

Synopses, Syllabi and Key Number Classification.
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Adm. Office, U.S. Courts -- West Publishing Company, Saint Paul, Minn.

United States Court of Appeals
For the Fifth Circuit

October Term,1979

No. 79-1146
Summary Calendar

D.C. Docket No. CA 78-5501 SMA

JULIA McCAIN LAMPKIN-ASAM,
Plaintiff-Appellant,
versus
THE SUPREME COURT OF FLORIDA
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Florida.

Before GOLDBERG, RONEY and TJOFLAT, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the District Court appealed from, in this cause be, and the same is hereby, affirmed;

It is further ordered that the plaintiff-appellant pay to the defendant-

Exhibit B (continued)

appellee the costs on appeal, to be taxed by the Clerk of this Court,

August 27, 1979

Exhibit C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE no. 78-5501-Civ. SMA

JULIA McCAIN LAMPKIN-ASAM
Petitioner
v.
THE SUPREME COURT OF FLORIDA
Respondent

ORDER OF DISMISSAL

THE COURT on its own motion hereby ORDERS AND ADJUDGES that the above action is DISMISSED for lack of subject matter jurisdiction.

DONE AND ORDERED at Miami, Florida, this 15 day of December, 1978.

Sidney M. Aronovitz
United States District Judge

cc: Julia McCain Lampkin-Asam
2243 Gorham Ave.
Ft. Myers, FL 33907
J. James Donnellan, III, Esq.
Joseph P. Averill, Esq.
S. Harold Skolnick, Esq.
District Court of Appeal, 3rd District
The Supreme Court of Florida

Exhibit D

Not Final Until Time Expires to File Re-Hearing Motion and, if filed, Determined.

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A.D. 1978
CASE NO. 54,134
JULIA McCAIN LAMPKIN-ASAM,
Petitioner,
v.
DISTRICT COURT OF APPEAL, THIRD DISTRICT,
Respondant.

Opinion filed November 9, 1978

A Case of Original Jurisdiction - Mandamus
Tobias Simon, Miami; and Andrew A. Graham and Joan H. Bickerstaff, Cocoa, for Petitioner
S. Harold Skolnick, Miami, for Respondent

SUNBERG, J.

By petition for writ of mandamus, we are asked to determine whether Florida Rule of Appellate Procedure 9.040 (b)the 1977 revision of Florida Appellate Rule 2.1 a. (5)(d), alters the result reached in Southeast First National Bank of Miami v. Herin, 357 So 2d 716 (Fla. 1978)[1]

1 The Court in Southeast reaffirmed the holdings in State ex rel. Diamond Berk Insurance Agency, Inc. v. Carroll, 102 So 2d 129 (Fla. 1958), and In re Estate of Hatcher, 270 So. 2d 45 (Fla. 1st DCA 1972).

In that case this Court held that the failure to file timely a notice of appeal in the lower tribunal deprived the appellate court of jurisdiction, even though the notice was filed in an otherwise timely fashion but in the district court of appeal. We have jurisdiction pursuant to Article V, Section 3(b)(5), Florida Constitution.

Petitioner was the plaintiff in a libel action in the Circuit Court of Dade County. On March 8, 1978, the trial court entered a final judgment in favor of one of the three defendants.

Thereafter, petitioner sought to appeal the adverse judgment by mailing a notice of appeal on April 5, 1978, two days prior to the thirdy-day jurisdictional time limit.[2] However, the notice was inadvertently sent to the District Court of Appeal, Third District, rather than to the Circuit Court of Dade County. Upon receipt the clerk of the district court mailed the notice to the clerk of the circuit court, who in turn filed the notice on April 14, 1978. On April 19, 1978, the District Court of Appeal. Third District, dismissed the appeal as not timely filed.

Petitioner maintains that Florida Rule of Appellate Procedure 9.040(b) supersedes Florida Appellate Rule 2.1 a.(5)(d) and the rationale underlying Southeast First National Bank v. Herin, supra, State ex rel. Diamond Berk Insurance Agency, Inc. v. Carroll, supra, and In re Estate of Hatcher, supra. It is argued that Rule 2.1 was broadened in the new rules so as to

2 Fla. R. App. P. 9.110(b).

protect from dismissal notices which are filed in the wrong court.

We cannot agree with this contention. Florida Rule of Appellate procedure 9.040(b) in no way altered the meaning or effect of Rule 2.1 a.(5)(d) or the cases construing it except as stated in the committee notes with respect to the results reached in Nellen v. State, 226 So. 2d 354 (Fla. 1st DCA 1969), and Engel v. City of North Miami, 115 So. 2d 1 (Fla. 1959), which have no application here. Hence Southeast First National Bank, Diamond Berk Insurance Agency, and Hatcher, supra, are dispositive of the issue before us.

The reasoning of the late Mr. Justice Drew in Southeast First National Bank, supra, ably demonstrates why Florida Rule of Appellate Procedure 9.040(b) is inapplicable to this case:

> This rule was designed to permit the transfer of cases where the appeal is taken to the wrong appellate court. For instance, where an appeal in a bond validation proceeding is taken to the District Court of Appeal instead of to the Supreme Court, or where an appeal in a case where the death penalty has been imposed is taken to the District Court instead of the Supreme Court, or where an appeal where life imprisonment has been imposed is taken to this Court instead of the District Court. There are also instances where jurisdiction depends on whether the trial court directly passed on the validity or constitutionality of a statute. Where it is deter-

Exhibit D (Continued)

> mined that the jurisdiction of the wrong court has been invoked, the rule and the constitution, as amended, provide for such transfer. The necessity for such a rule was the result of the creation of the Distirct Courts of Appeal in Revised Article V of the Florida Constitution in 1957, and the proscribed (sic) jurisdiction of the courts of the appellate system in the constitution.

357 So. 2d at 717, 718 (citations omitted).

Inasmuch as the transfer provision of Florida Rule of Appellate Procedure 9.040 (b) does not apply herein, the untimely filing of the notice of appeal constitutes a jurisdictional defect depriving the district court of jurisdiction to entertain petitioner's appeal:

> (T)he timely filing of a notice of appeal at the place required by the rules is essential to confer jurisdiction on the appellate court.
>
> * * *
>
> A court has no power to act in the absence of a jurisdictional foundation for the exercise of the power.

State ex rel. Diamond Berk Insurance Agency, Inc. v. Carroll, 102 So. 2d at 130, 131.

Had there been any intent by adoption of the new appellate rules to authorize indiscriminate filing of notices of appeal in any tribunal, Florida Rule of Appellate Procedure 9.110(b) would not provide that

Exhibit D (Continued)

jurisdiction of an appellate court shall be invoked by filing a notice with the clerk of the lower tribunal.[3]

There being no legal basis for the relief sought, the petition for writ of mandamus is hereby denied, and the order to show cause heretofore issued is quashed.

It is so ordered.

ADKINS, Acting C.J., BOYD, OVERTON, HATCHETT and ALDERMAN, JJ., Concur.

---

3 Fla. R. App. P. 9.110(b) provides:

> "Jurisdiction of the court under this rule shall be invoked by filing two copies of a notice, accompanied by filing fees prescribed by law, with the clerk of the lower tribunal within 30 days of rendition of the order to be reviewed."

Exhibit E

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT JANUARY TERM, A.D. 1978
WEDNESDAY, April 19, 1978
Case no. 78-741
JULIA McCAIN LAMPKIN-ASAM
Appellant,
vs.
WILHELMINA FRANCIS DUNNING,
TERRY JOHNSON KING, and
MIAMI DAILY NEWS, INC., a
Florida corporation d/b/a
THE MIAMI NEWS,
Appellees.

Exhibit E (Continued)

It appearing to the court, from an examination of the Notice of Appeal. The above styled cause was not timely filed, it is therefore ordered that this appeal from the Circuit Court of Dade County, Fla. Case #75-32943) be and the same is hereby dismissed.

A True Copy
ATTEST:

Clerk District Court of
Appeal, Third District
cc: J. James Donnellan, III
Joseph P. Averill
S. Harold Skolnick
Richard P. Brinker
Dan Satin

Exhibit F

IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 75-32943 (23)

JULIA McCAIN LAMPKIN-ASAM
Plaintiff,
vs.
WILHELMINA FRANCIS DUNNING, TERRY JOHNSON KING, and MIAMI DAILY NEWS, INC., a Florida corporation d/b/a THE MIAMI NEWS,
Defendants.

Exhibit F (Continued)

ORDER GRANTING MOTION OF
DEFENDANT, WILHELMINA
FRANCIS DUNNING

THE ABOVE ENTITLED CAUSE came on to be heard before the undersigned Judge on the Motion of the Defendant, WILHELMINA FRANCIS DUNNING, for the entry of a Summary Judgment. The Court heard argument of counsel for the respective parties, considered all the pleadings and reviewed the memorandums of law submitted by each of the parties. The defendant advances several theories upon which she believes she is entitled to a Summary Judgment; this Court will deal with only that theory advanced by the Defendant which this Court believes has merit.

Florida Statute 770.01, entitled "NOTICE, CONDITION PRECEDENT TO ACTION OR PROSECUTION FROM LIABLE OR SLANDER", reads as follows:

> "Before any civil action is brought for publication or broadcast, in a newspaper, periodical, or other medium, of a liable or slander, plaintiff shall at least five days before instituting such action, serve notice in writing on the defendant, specifying the article or broadcast and the statement therein which he alleges to be false and defamatory."

It has generally been presumed that this statute was restricted in its application to the news media, however an examination of the quoted statute reflects no such restriction. The defendant relies upon the case of HEVEY v. NEWS-JOURNAL CORPORATION, et al, reported in 148 So. 2d 543, which supports the position of the defendant.

Exhibit F (Continued)

Additionally, when the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction.

The plaintiff has admitted to non-compliance with this statute as to the Defendant, DUNNING, and accordingly, on this record, the Defendant, WILHELMINA FRANCIS DUNNING, is entitled to a Summary Final Judgment on the ground that Florida Statute 770.01 has not been complied with, it is accordingly

ORDERED AND ADJUDGED as follows:

1. The motion for Summary Judgment of the Defendant, WILHELMINA FRANCIS DUNNING, is granted.

2. The plaintiff, JULIA McCAIN LAMPKIN-ASAM, shall take nothing by this action and the Defendant, WILHELMINA FRANCIS DUNNING, shall go hence without day.

3. Costs, to the extent as they may be taxable by law, shall be subject of such further order or orders as the Court deems necessary and proper, and jurisdiction is reserved for the purpose of assessing such taxable costs, if any.

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida, this 8 day of March, 1978.

Dan Satin
Circuit Judge

Copies to: J.James Donnellan,III, Esq.
S. Harold Skolnick, Esq.
Joseph P. Averill, Esq.